

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>RODOLFO ZARAGOZA-LOPEZ,</p> <p>Petitioner,</p> <p>vs.</p> <p>UNITED STATES OF AMERICA,</p> <p>Respondent.</p>	<p>MEMORANDUM DECISION AND ORDER DENYING PETITIONER’S MOTION FOR CERTIFICATE OF APPEALABILITY</p> <p>Civil Case No. 2:12-CV-470 TS</p> <p>Criminal Case No. 2:11-CR-125 TS</p>
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This matter is before the Court on Petitioner’s Motion for Certificate of Appealability (“COA”). For the reasons stated below, the Court will deny the Motion.

The Court has previously denied Petitioner’s motion under 28 U.S.C. § 2255, his 59(e) motion, and his 60(b) motion. Petitioner now seeks a certificate of appealability.

28 U.S.C. § 2253(c)(1)(B) provides: “Unless a circuit judge or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from . . . the final order in a proceeding under section 2255.” A certificate of appealability may be issued “only if the

applicant has made a substantial showing of the denial of a constitutional right.”¹ To make this showing, Petitioner must demonstrate “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.”² “The COA determination under § 2253(c) requires an overview of the claims in the habeas petition and a general assessment of their merits.”³ “This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it.”⁴ While Petitioner is not required to prove the merits of his case, he must demonstrate “something more than the absence of frivolity or the existence of mere good faith” on his part.⁵

Considering this standard, as well as the issues raised in Petitioner’s § 2255, 59(e), and 60(b) motions, the Court finds that Petitioner has failed to make a “substantial showing of the denial of a constitutional right.”⁶ It is therefore

ORDERED that Petitioner’s Motion for Certificate of Appealability (Docket No. 8) is DENIED.

¹28 U.S.C. § 2253(c)(2).

²*Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quotations omitted).

³*Id.* at 336.

⁴*Id.*

⁵*Id.* at 338.

⁶28 U.S.C. § 2253(c)(2).

DATED September 11, 2012.

BY THE COURT:



TED STEWART
United States District Judge